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Sent: Wednesday, October 26, 2005 6:28 PM  
To: ATR-Real Estate Workshop  
Subject:

I have held a California real estate broker's license since 1981, and have participated in many kinds of real estate transactions.

In 1981, as a new broker, I became aware of the problems with dual agency. Buyer's always believed the person they worked with was their agent. But, in those days, there was no contract appointing "their agent" as their agent. There was a buyer/seller agreement and a listing agreement and neither of those named a buyer's agent. In the mid 80's, the National Association of Realtors studied the issues and, at first, advised Realtors to avoid dual agency.

However, because most agents would rather keep ALL the commission by representing both buyer and seller, that advice did not go over very well. The outcome was that in many states, such as California, state associations of Realtors lobbied new state laws to codify the approval of dual agency. That overturned the concept of agency which had been the legal standard for generations. Now, the normal conflict of interest between a buyer and seller could be ignored if an agent disclosed to all parties that he/she was a dual agent.

In addition, Realtors have carefully schemed to get around the anti-trust laws that supposedly prevent the commission rate for real estate transactions being fixed. They do this by being very careful in how they explain commission rates to their sellers. But, the reality is, almost all residential brokers charge the same rate. That means that Realtors give a wink and a nod to the law preventing price fixing while continuing to stay with the "traditional" 6% commission for homes and 10% for land transactions.

Since 1981, seven years before it was codified in California, all transactions in which I was an agent, I disclosed to buyers and sellers that I was the exclusive agent of the buyer or the seller, depending on whom I represented in that particular transaction. And, since 1981, I have never been involved in a transaction where I was a dual agent. I believe it would be unethical to do so. An agent cannot fully meet the full fiduciary obligations to both parties required of any agent while representing both parties.

I believe as long as dual agency exists, many agents/brokers will continue to take unfair advantage of clients who do not know that there are alternatives. In my opinion, dual agency should be eliminated by federal laws governing transactions in all states. That would impose the requirement that each agent actually does represent only one party in the transaction which will lessen the amount of consumer fraud perpetuated by the unscrupulous agents that are so common today. If attorneys cannot present more than one client when there would be a conflict of interest, why should real estate agents be allowed to do so?

Because of the lowering of its ethical standards, I resigned membership in the local board of Realtors and its state and federal associations.

Right now, the National Association of Realtors has sent out a call to all members to prevent any changes by the DoJ or FTC by providing specific paragraphs members can use in an effort to protest any changes that would

interfere with the status quo.

I hope that there will be some new regulations that will clean up the real estate industry. It sorely needs them.

Repectfully submitted

Sammie J Gilstrap, independent broker